



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable John S. Baker  
County Auditor  
Lamar County  
Paris, Texas

Dear Sir:

Opinion No. O-4638  
Re: Commissioners' Courts - con-  
tracts with attorneys for the  
collection of delinquent taxes.

Your request for opinion has been received and carefully considered by this department. We quote from your request as follows:

"I will appreciate your giving me an opinion answering the following:

"The County Attorney of Lamar County is far too busy to handle tax suits and has so certified to the Commissioners' Court. The Commissioners' Court had a contract with a local attorney, to collect delinquent taxes, which expired sometime ago.

"Since there are now very few tax matters requiring the services of an attorney and all available attorneys are too busy to take the tax contract, the Commissioners' Court has neither renewed that contract or made a new contract with any other attorney.

"For sometime it has been the practice of the Commissioners' Court to thoroughly investigate all requests for adjustment of back taxes, penalties and interest, before it. After full investigation the Commissioners' Court has in open court made a proper order showing their recommendation of any adjustment they have considered proper in the case of property which was on the rendered list.

"Of course a suit must be brought through the District Court to settle these cases where the property is on the rendered list. This is always a

strictly friendly suit without any controversy and is only a matter of form to collect the taxes justly due and place the property on a paying basis.

"The Commissioners' Court has therefore felt at liberty to employ any reputable local attorney to handle these occasional suits. A question has recently been raised as to their authority to do so.

"I will further state that the Commissioners' Court pays no compensation to the attorney who handles these cases by way of commissions or otherwise.

"The question I want to have answered is therefore as follows:

"Under the above circumstances may the Commissioners' Court in its discretion employ any reputable local attorney they see fit to employ for the purpose of bringing each one of these entirely friendly and agreed suits in the District Court, or is it a matter of absolute necessity that they make a Tax Contract in writing with one or more local attorneys to handle these matters."

Articles 7335 and 7335a, Vernon's Annotated Texas Civil Statutes, read as follows:

"Art. 7335. 7691 Contract with attorney

"Whenever the commissioners court of any county after thirty days written notice to the county attorney or district attorney to file delinquent tax suits and his failure to do so, shall deem it necessary or expedient, said court may contract with any competent attorney to enforce or assist in the enforcement of the collection of any delinquent State and county taxes for a per cent on the taxes, penalty and interest actually collected, and said court is further authorized to pay for an abstract of property assessed or unknown and unrendered from the taxes, interest and penalty to be collected on such lands, but all such payment and expenses shall be contingent upon the collection of such taxes, penalty and interest.

Honorable John S. Baker, Page 3

It shall be the duty of the county attorney, or of the district attorney, where there is no county attorney, to actively assist any person with whom such contract is made, by filing and pushing to a speedy conclusion all suits for collection of delinquent taxes, under any contract made as herein above specified; provided that where any district or county attorney shall fail or refuse to file and prosecute such suits in good faith, he shall not be entitled to any fees therefrom, but such fees shall nevertheless be collected as a part of the costs of suit and applied on the payment of the compensation allowed the attorney prosecuting the suit, and the attorney with whom such contract has been made is hereby fully empowered and authorized to proceed in such suits without the joinder and assistance of said county or district attorneys. Acts 2nd C.S. 1923, p. 37; Acts 3rd C.S. 1923, p. 182.

"Art. 7335a. Delinquent tax contracts.

"Sec. 1. No contract shall be made or entered into by the Commissioners' Court in connection with the collection of delinquent taxes where the compensation under such contract is more than fifteen per cent of the amount collected. Said contract must be approved by both the Comptroller and the Attorney General of the State of Texas, both as to substance and form. Provided however the County or District Attorney shall not receive any compensation for any services he may render in connection with the performance of the contract or the taxes collected thereunder.

"Sec. 2. Any contract made in violation of this Act shall be void. Acts 1930, 41st Leg., 4th C.S., p. 9, ch. 8."

It is our opinion that the above quoted statutes are mandatory and exclusive and that the Commissioners' Court has no authority to contract with an attorney to collect delinquent taxes (where the county attorney or district attorney fail or refuse to collect delinquent taxes) in any manner other than that set out in the above statutes. Such contracts are

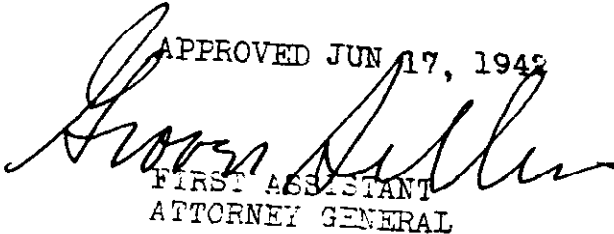
Honorable John F. Baker, Page 4

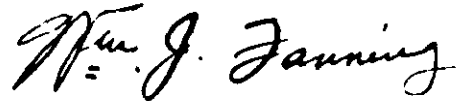
subject to the approval of the Attorney General and the Comptroller both as to substance and form. All contracts with or employment of attorneys for the collection of delinquent taxes not in conformity with the above quoted statutes are void.

Trusting that this satisfactorily answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

APPROVED JUN 17, 1942  
  
 FIRST ASSISTANT  
 ATTORNEY GENERAL

By   
 Wm. J. Fanning  
 Assistant

WJF:mp

